

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Faith Sage, as Trustee for the Next of  
Kin of Decedent Kassondra Sage,

Case No. 18-3170 (DSD/BRT)

Plaintiff,

v.

**ORDER TO COMPLY WITH  
DEPOSITION SUBPOENAS**

Bridgestone Americas Tire Operations,  
LLC and Walmart, Inc.,

Defendants.

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This matter was heard on August 12, 2019, before the Honorable Becky R. Thorson on Defendant Bridgestone Americas Tire Operations, LLC's ("Bridgestone") Motion to Compel *Compliance with Deposition Subpoenas*.

**BACKGROUND**

Jody Rossberg and Anthony Barton failed to comply with properly issued and served subpoenas requiring their testimony at depositions on May 23, 2019. (*See* Decl. of Julia Dayton Klein, Doc. No. 52 at ¶¶ 2-3, Exs. 1, 2.) Neither Ms. Rossberg nor Mr. Barton objected to those subpoenas, nor did they offer an explanation for their failure to appear.

Counsel for Defendant Bridgestone made numerous efforts to contact Ms. Rossberg and Mr. Barton after their failure to appear, but those efforts were unsuccessful. (*Id.* at ¶¶ 5-6.) On June 19, 2019, Ms. Rossberg contacted Bridgestone's counsel and stated that she and Mr. Barton would appear and testify at depositions on June 28, 2019. (*Id.* at ¶ 7.)

Subpoenas reflecting this new date were issued. (*Id.* Ex. 6.) However, both Ms. Rossberg and Mr. Barton again failed to appear. (*Id.* at ¶ 11.)

Bridgestone's counsel issued a third set of subpoenas, this time for depositions on September 17, 2019. (*Id.* Ex. 9.) Service of those subpoenas was successful on Ms. Rossberg, but Mr. Barton has not yet been served despite multiple attempts. (Decl. of Richard Farganis, Doc. No. 59 Exs. A, B.)

### **CURRENT ORDER**

A district court can enforce a subpoena by holding a person who failed to comply with the subpoena in contempt of court and by imposing sanctions. *See* Fed. R. Civ. P. 45(g). Such sanctions can be significant. *See, e.g., Nat'l Credit Union Admin. Bd. v. Cumis Ins. Soc'y, Inc.*, No. 16-CV-139 (DWF/LIB), 2018 WL 6288110, at \*3 (D. Minn. Oct. 22, 2018), *report and recommendation adopted*, No. 16-CV-139 (DWF/LIB), 2018 WL 6271044 (D. Minn. Nov. 30, 2018) (ordering the arrest and detention of a third-party witness who failed to appear at his deposition).

Although sanctions may be imposed, the preferred approach is for the district court to first issue an order directing the subpoenaed party to comply with the subpoena. *See United States v. R.J. Zavoral & Sons, Inc.*, 2014 WL 12756820, at \*5 (D. Minn. Jan. 17, 2014) (“[A] court may order the subpoenaed party to comply with the subpoena.”); 9A Fed. Prac. & Proc. Civ. § 2465 (3d ed.) (“[T]he district judge normally will preface a contempt citation with an order directing either compliance with the subpoena or a showing of an excuse for the noncompliance.”).

Therefore, **IT IS HEREBY ORDERED THAT** Bridgestone's Motion to Compel *Compliance with Deposition Subpoenas* (Doc. No. 49) is **GRANTED** as follows:

1. Ms. Rossberg and Mr. Barton must comply with the properly issued subpoenas directing them to appear at depositions on the afternoon of September 17, 2019 at the offices of Gray Plant Mooty, 500 IDS Center, 80 South 8<sup>th</sup> Street, Minneapolis, Minnesota.
2. If either Ms. Rossberg or Mr. Barton fail to appear at the September 17, 2019 depositions, this Court will issue an order to show cause as to why they should not be held in contempt, and why they should not face sanctions.
3. If either Ms. Rossberg or Mr. Barton fails to provide an adequate explanation as to why they should not be held in contempt, sanctions may be imposed pursuant to Fed. R. Civ. P. 45(g).

Dated: August 15, 2019

s/ Becky R. Thorson  
BECKY R. THORSON  
United States Magistrate Judge